IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5547 OF 2005

Abrar Gulzar Azmi. ... Applicant.

Versus.

The State of Maharashtra. ... Respondent.

Shri Shahid Azmi for the Applicant.

Shri A.S.Gadkari, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 7th October, 2005.

P.C.:

1. This is an application for bail made by the accused No.1 where offences registered are under sections 506(II), 34 of the Indian Penal Code read with sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOC Act").

2. The allegation of the prosecution is that on 1st February 2005 at about 11.35 hours, the Complainant along with her daughter was passing by Imamwada road towards her residence, four accused persons approached them and threatened them by stating that the complainant and her daughter were providing information about the illegal activities of their gang to the Police and also alleged that she had given information to the Police

which resulted into the arrest of the co-accused. At that time the complainant's son was passing from the spot and on noticing him, the four accused persons tried to nab him and also threatened the complainant, her son and daughter that they would kill the entire family through one Faeem Machmach. According to the case of the prosecution, the Applicant and the other accused persons are associates of one Faheem Machmach and they are working for him and large number of cases are registered against the Applicant and the other accused. The allegation is that the Applicant is a member of the Organized crime syndicate of Faeem Machmach, an associate of Chhota Shakeel. It is alleged that the Applicant and the other co-accused are constantly in touch with Faeem Machmach and are members of the organized crime syndicate of Chhota Shakeel, a faction of Dawood Ibrahim's organized crime syndicate operating from Karachi.

3. The learned Advocate for the Applicant submitted that the alleged incident is of 1st February 2005 and the F.I.R. was belatedly lodged on 9th February 2005. He submitted that no role has been ascribed to the Applicant regarding the giving threats to the complainant or her daughter or her son. He pointed out that in earlier cases registered against the Applicant he has been discharged under section 239 of the Code of Criminal Procedure, 1973. He pointed out that the

Applicant himself had made a complaint to the Senior Inspector of Police, J.J.Marg Police Station on 4th September 2004 against the Complainant pointing out that the Complainant is an anti-social element. The learned Advocate for the Applicant has taken me through the material produced along with the charge-sheet and submitted that there is absolutely no possibility of the Applicant being convicted on the basis of the available material on record. He placed reliance on the decision of the Apex Court reported in 2005 S.C.C.(Cri.) page 1007 (Vasanthi v/s. State of Andhra Pradesh). He submitted that the only offence registered against the Applicant is under section 506(II) of the Indian Penal Code which is a non-cognizable and bailable offence.

4. The learned A.P.P. has pointed out the relevant material against the Applicant and submitted that considering the narrow scope of bail application under section 21(4) of the MCOC Act, no case is made out for grant of bail.

5. I have considered the submissions. The learned counsel appearing for the Applicant pressed into service the Judgment of the Apex Court in the case of Vasanthi (supra). He placed reliance on the paragraph 7 of the said Judgment which reads thus:

"If we apply the probability test that has

been propounded by this Court to the facts of the present case, it is difficult to reach a tentative conclusion that the appellant in all probability will be convicted of the offence."

The submission was that the test laid down by the Apex Court is that the accused is entitled to bail if it is difficult to reach a tentative conclusion that the accused in all probability will be convicted of the offence. However, in my view the said observation cannot be read as a ratio of the decision of the Apex Court in the said case of Vasanthi. In the said decision, the Apex Court relied upon its own decision of a larger Bench reported in 2005 S.C.C.(Cri.) page 1057 (Ranjitsingh Sharma v/s. State of Maharashtra). In paragraph 38 of the said decision, the Apex Court held thus:

"We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. **If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed."** (Emphasis supplied)

Thus the test laid down by the Apex Court is that while

considering the application for bail which is governed by section 21(4) of the MCOC Act, if the Court, having regard to the material on record is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed.

6. In the light of this legal position, the material on record will have to be examined. The statement of the daughter of the complainant discloses that with a view to create terror as the complainant is a social worker, for the period from 1999 to 2003, the Applicant and the other co-accused have assaulted her brother Abdul by chopper. She has described the incident of 1st February 2005 involving the Applicant and the co-accused. She stated that the Applicant and the other co-accused threatened to kill herself, her mother and her brother and they stated that they will inform Faeem Machmach to wipe out the entire family. The same is the statement of the son of the complainant. Another statement has been recorded on 12th February 2005 of a witness, who stated that Faeem Machmach was working for Chhota Shakeel and for four to five years he is involved in the activities of extorting amounts from the merchants. The said witness has also stated that the Applicant and two other persons gave telephone number of a merchant to Faeem Machmach who demanded ransom from the said merchant. The statement of a STD Booth operator has been recorded. He stated that Faeem

Machmach used to call in the said STD Booth for talking to the Applicant. He stated that on many occasions the Applicant and one Aslam used to discuss on telephone with Faeem Machmach regarding the recovery of amounts.

7. There is a statement of one more witness who stated that the Applicant and the other co-accused gave his telephone number to Faeem Machmach and he was threatened by Faeem Machmach for extorting certain amounts.

8. Considering the various statements of the witnesses, it prima-facie appears that the nexus between the Applicant and Faeem Machmach is established. The Applicant seems to be associated with the activities of the organized crime syndicate of Faeem Machmach. Thus at this stage it is impossible to come to the conclusion that in all probability the Applicant will be acquitted of the offence punishable under section 3(2) of the MCOC Act.

9. Though offence under section 506(II) of the IPC is non-cognizable and bailable, the State Government had issued a notification dated 10th August 1962 by which the offences of criminal intimidation under section 506 where threat is given to cause death or to cause grievous hurt is made cognizable and non-bailable in Greater Mumbai. Apart from the decision of this Court

reported in 1988 Mah.L.J. page 76 (State of Maharashtra v/s. Rajkumar), in this case section 3(2) of the M.C.O.C. Act has been applied.

10. Hence there is no merit in the application and the same is rejected.

Judge.